

PROCEEDINGS

1 (A discussion was held off the record.)

2 THE COURT: You can opt not to answer the
3 question. You can say I am an idiot. You have
4 two choices, in my view. I can say at least one
5 felony drug conviction or I can say felony drug
6 convictions.

7 MR. KEITH: Was there more than one?

8 THE COURT: There is the Federal business
9 about the shotgun and a drug felony that he talked
10 about here.

11 MR. KEITH: Right, but the plea in that
12 case was to a gun.

13 THE COURT: We're talking about facts.
14 What you allege are facts about only a drug deal,
15 the significance of a scale.

16 MR. KEITH: So the facts are that he pled
17 to a shotgun. I don't think there was sufficient
18 evidence to connect him to the drug conspiracy.
19 In the Federal system, based on my experience and
20 understanding, if there is an indictment, they
21 usually go for the top count. It must have been
22 clear and convincing evidence that he was not
23 guilty in order to let him plead to the gun. They
24 do not plea bargain.

25 THE COURT: I remember that from the

PROCEEDINGS

1 Sandoval discussions. Anything you want to say
2 about the number of convictions.

3 MR. BERLAND: The Federal conviction was
4 for possession of a firearm in the course of drug
5 trafficking. I think he pled guilty to the gun in
6 drug trafficking. However Counsel wants Your
7 Honor to phrase it.

8 THE COURT: I will say "at least one drug
9 felony conviction."

10 MR. KEITH: Specify the year. It was in
11 1994.

12 THE COURT: Do you want me to tell them
13 the sentence? Do you know when he was released
14 from parole?

15 MR. BERLAND: I do.

16 MR. KEITH: I don't want to make it sound
17 like this happened yesterday.

18 THE COURT: That's a valid point. When
19 was he released?

20 MR. BERLAND: I think I was from '96
21 to '01.

22 THE COURT: Sure.

23 MR. BERLAND: Can I take a one-minute
24 break. I would fall asleep if I were them, too.
25 It is the only intelligent thing to do.

PROCEEDINGS

1 (Whereupon, the sidebar conference
2 concluded and the proceedings continued in open court
3 as follows:)

4 THE COURT: All right, I yield. We'll
5 take a short break and then we'll come back and
6 we'll move this until it's over. Keep an open
7 mind. Do not discuss the case. Further
8 developments will occur.

9 (Whereupon, a brief recess was taken,
10 after which the following proceedings were had:)

11 THE COURT: Anything else anybody wants
12 to say?

13 MR. BERLAND: He was incarcerated from
14 February 8, 1996 to February 13, 2001.

15 THE COURT: According to the NYSID sheet
16 he was on Federal probation until
17 February of 2003.

18 MR. KEITH: Your Honor.

19 THE COURT: Yes.

20 MR. KEITH: I think we should take a look
21 at exactly what Mr. Green was incarcerated for. I
22 know the prosecutor had said that this weapons
23 conviction has something to do with the narcotics
24 trafficking. I think at the very least that
25 specific crime should be brought forth.

YVETTE PACHECO SENIOR COURT REPORTER

PROCEEDINGS

1 THE COURT: When you say "brought
2 fought," what do you have in mind?

3 MR. KEITH: I believe he pled to a
4 weapons charge. I don't believe there is language
5 about narcotics trafficking.

6 THE COURT: Do you have anything about
7 the besides the NYSID sheet?

8 MR. BERLAND: Count two of the
9 indictment, Your Honor.

10 THE COURT: On the NYSID sheet, count two
11 is listed as arms narcotics trafficking. We're
12 about to do this.

13 MR. KEITH: Below that it says, Charged
14 possession of weapon. Plea sentence 60 months.
15 Clearly what's about to happen will drastically
16 change the case and deprive Mr. Green of a fair
17 trial. There must be some alternate solution to
18 avoid this draconian result that's about to
19 happen.

20 THE COURT: Like what? You can use all
21 the adverbs you want, but you put us here. What
22 is your next snappy solution to this conundrum?
23 Anything else?

24 MR. KEITH: Yes, Your Honor. As it
25 appears, Your Honor has come to the conclusion

PROCEEDINGS

1 that the jury should be advised of some
2 information with regard to Mr. Green. Maybe we
3 should reopen the trial and let me Mr. Green
4 testify.

5 THE COURT: About what?

6 MR. KEITH: About the case, about the
7 evidence.

8 THE COURT: I'm here until 2002 and then
9 ten more years. Do you want to be heard about
10 whether to put him on?

11 MR. BERLAND: I don't see how the
12 procedure in any way would dictate allowing the
13 case to be reopened now because of a mistake, if
14 you will, or a door opening made by the defendant
15 that he should be entitled to put the client now
16 at this juncture because something he chose to do
17 didn't go as planned. I would object.

18 THE COURT: Are we bound by the same
19 Sandoval ruling? I suppose we are; otherwise, the
20 application wouldn't have been made under those
21 circumstances. Bring them out --

22 MR. BERLAND: Your Honor, I ask that we
23 issue the Sandoval ruling. I know there is the
24 kidnapping charge which Your Honor stated would
25 not be admissible.

PROCEEDINGS

1 THE COURT: What would be the valid basis
2 on which to let the jurors know, in fact, it's not
3 only a drug charge going back a couple of decades,
4 but related to a kidnapping? Things are supposed
5 to take a normal progression and that was valid at
6 the time it was made. I don't know what has
7 happened, as annoying and stressing and
8 disappointing as it is, would cause that part of
9 ruling to alter. If it was fair then, it strikes
10 me as fair now. What's your argument?

11 MR. BERLAND: Goes back to my original
12 argument a crime of dishonesty and deception, and
13 therefore should be admissible for the arguments I
14 made last week.

15 THE COURT: Well, again, I will not
16 reopen it and change it notwithstanding. If I had
17 known what was going to happen, perhaps, but not
18 now.

19 MR. KEITH: Your Honor, he's not
20 testifying.

21 THE COURT: Can you give me a little more
22 guidance about that? This is starting to appear
23 on the record as if it's some sort of toying and
24 charade with regard to what the option is. Now I
25 understand that defense attorneys feel like

PROCEEDINGS

1 they're almost in a Hobson's Choice and a
2 Catch 22, when they're presented with horrible
3 alternative situation, but as a trial judge I've
4 gotten schooled into and have often heeded the
5 advice of giving the defense one last chance to
6 propose some alternative. And so we were almost
7 ready to announce a portion of Mr. Green's
8 criminal history, when I said, Is there something
9 else you wanted to do. You said, He'll testify.
10 I said, About what? You told me that about seven
11 minutes ago, and now that's been altered.

12 Bring in the jury, and I'll tell them
13 about the criminal history as re--

14 MR. KEITH: Before the jury is brought in
15 what are you about to tell the jury?

16 THE COURT: Just what I told you. You
17 suggested to me that you wanted it specific about
18 what the weapon conviction was. The prosecutor
19 has got the second count of the weapon conviction
20 which says armed narcotics trafficking. I plan to
21 say he was convicted of possessing a shotgun in
22 connection with an armed narcotics trafficking and
23 then I plan to say convicted of attempt to commit
24 a drug sale. If they have to ask questions about
25 what does that mean "attempt," I will wait for a

PROCEEDINGS

1 note if the deliberations ever begin, and since
2 you asked me to make it clear that he wasn't just
3 convicted or just released, I was going to tell
4 them that --

5 MR. KEITH: I didn't say anything about
6 being released.

7 THE COURT: No, but you did say you
8 wanted it clear that he wasn't just convicted.
9 The appropriate judicial response in my humble
10 opinion is to let the jury think that in 1996,
11 fairy dust were dropped on him and became a
12 felony, that was the end of the experience. He is
13 in jail, not circulating, until 2000, of which
14 he's released from state prison, on parole until
15 October 7, 2002, and I believe on Federal
16 probation until February of 2003. At that point,
17 he begins to get credit for five years or
18 four years of drug free and during, but not back
19 to '96.

20 MR. KEITH: Would you consider, as an
21 alternative, that you instruct the jury simply
22 that with regard to an incident that occurred on
23 July 1, 1994, Mr. Green plead guilty to Attempted
24 Criminal Sale of a Controlled Substance?

25 THE COURT: How about I say, "In

PROCEEDINGS

1 connection with an event in which he was an active
2 participant he was convicted in 1996."

3 MR. KEITH: Right, in the incident
4 in '94, the conviction in '96.

5 THE COURT: I will not use the word
6 "incident."

7 MR. KEITH: That's when it happened.

8 THE COURT: I'll make it a little more
9 accurate as opposed to passive.

10 MR. KEITH: How are you going to say it?

11 THE COURT: In relation to a drug sale in
12 he participated in in 1994, in 1996 he was
13 convicted of something known as an attempt to
14 commit criminal sale of a controlled substance.

15 MR. KEITH: And to further comprise that,
16 being that we're going down this road, I don't
17 believe that the document that the assistant
18 district attorney has with regard to the Federal
19 case is the actual statute. If we had the actual
20 statute, I would still not want it in. I just
21 think that it's too overwhelmingly prejudicial and
22 would have a problem with giving Mr. Green a free
23 trial.

24 THE COURT: I'm going to bring in the
25 jury and then we'll hear what I have to say --

PROCEEDINGS

1 MR. KEITH: Of course, Your Honor, I
2 think because of all of this, all of the rulings
3 that were previously made in the case, there
4 should be a mistrial.

5 THE COURT: Denied. If there is a
6 conviction, I can fairly wait the two years until
7 the Appellate courts decide whether I was wrong or
8 right.

9 Bring in the citizens.

10 COURT OFFICER: Jury entering.

11 THE COURT: Sorry for the delay. As I
12 said Friday, sometimes there is information that
13 becomes admissible or is admissible at on point
14 and not admissible at another point.

15 You're not to speculate about why you are
16 given certain information. I emphasize that each
17 individual case has to be decided on its own
18 merits, but with respect to the analysis presented
19 so far, you should know that the defendant,
20 Mr. Green, has two convictions related to drug
21 felony charges.

22 One is for possessing a shotgun in
23 connection with armed narcotics trafficking. That
24 was the Federal offense. The event I believe was
25 from 1996, October, and that he was released from

YVETTE PACHECO SENIOR COURT REPORTER

SUMMATIONS - PEOPLE

1 jail and that he was ultimately on Federal
2 probation until February 2003.

3 Also, in connection with a 1994 sale of a
4 controlled substance, in 1996, Mr. Green plead
5 guilty to a crime known as an attempt to commit a
6 drug sale. He received a state prison sentence
7 and he was released from prison in October of 2000
8 and released from parole in October of 2002.

9 We'll hear the People's summation.

10 MR. BERLAND: Ladies and gentlemen, this
11 is a straightforward and simple case. I want to
12 make one thing absolutely clear to you right now
13 despite what defense counsel said during the
14 closing arguments, this is not my case, I don't
15 know have a personal stake in the outcome of this
16 case. See, I represent you, the People of the
17 State of New York. This is a case against
18 Edward Green.

19 This straightforward case is also a very
20 important case. The defendant is charged with
21 possessing mass quantities of cocaine recovered
22 from the both the second and fourth floor
23 apartment at 451 Lenox Avenue and the defendant is
24 also charged with possessing an obscene amount of
25 paraphernalia from the two rooms.

YVETTE PACHECO SENIOR COURT REPORTER

SUMMATIONS - PEOPLE

1 This isn't a case about someone spitting
2 on the sidewalk. This isn't a case about someone
3 blocking pedestrian traffic. This is a case about
4 heavy-duty drug possession. Because it is an
5 important case, doesn't make it a difficult case.

6 You, the jury, have heard all the
7 evidence. It's been a very good trial. Lasted
8 less than one week. Soon, sometime today, you
9 will have to make some decisions. I submit to you
10 in life there are easy decisions and difficult
11 decisions. There are important decisions and
12 there are some decisions that just aren't so
13 important.

14 Just because something is important
15 doesn't make it difficult. For example, this
16 morning when I work up and got dressed to come to
17 court, I had to put on a tie. I opened the closet
18 door, looked at the ties, five to ten to choose
19 from. It took some time. It was a difficult
20 decision, but it didn't mean anything. It wasn't
21 important in any way.

22 An easy decision will be like crossing
23 the street, getting from point A to point B.
24 Nothing hard about that. But is an important
25 decision. When you cross the street, if you are

SUMMATIONS - PEOPLE

1 not paying attention, you don't look both ways,
2 you can get hit by a car, truck, bicyclist
3 catastrophic.

4 My point is you can have an important
5 decision which is really easy to make such as
6 crossing the street. And I submit to you, ladies
7 and gentlemen of the jury, that when you go back
8 out to the jury room to deliberate, to decide this
9 very important case, it will be as easy as
10 crossing the street.

11 Now, there is nothing in the Judge's
12 charge, nothing that says you, the jury, need to
13 take a long time in reaching a verdict. All that
14 is required of you is that you discuss the
15 evidence, listen to each other's views and follow
16 the law.

17 Each and every one of you were selected
18 for this jury because of your life experience and
19 your common sense. When you go back to the jury
20 room to deliberate, don't check all that at the
21 door.

22 I'm confident that when you look at all
23 the evidence in its totality, you will not be left
24 sitting in the dark. It will be clear as day that
25 the defendant was part of a drug team and that he

~~SUMMATIONS - PEOPLE~~

1 knew a pound of cocaine was stashed in the closet
2 in the fourth floor room. I want to go over this
3 evidence with you now. The evidence that will
4 help you in reaching a swift and just verdict.

5 Last night, I was compiling a list of all
6 the overwhelming facts proving the defendant's
7 guilt. There are 20 overwhelming facts that I can
8 think of.

9 One, the defendant ran into the fourth
10 floor room. He chose to go there.

11 Two, the defendant was sitting in the
12 dark when the police arrived. The lights were
13 out.

14 Three, the defendant was frozen on the
15 couch and completely silent. He refused to
16 acknowledge the police when they knocked on the
17 door and when they entered the apartment.

18 Four, there were black plastic bags --
19 MR. KEITH: Objection to the last remark.
20 THE COURT: Overruled. You had your say.
21 I will explain what the law is. I will.
22 Go ahead.

23 MR. BERLAND: Four, there were black
24 plastic bags over the windows, over the window,
25 one window. The black bags were placed there to

~~SUMMATIONS - PEOPLE~~

1 prevent anyone from seeing in.

2 Five, there was a video surveillance
3 system set up in a single occupancy room that
4 doesn't even have a bathroom.

5 Six, a glass table for cutting and
6 processing cocaine was in the room and this table
7 was covered in cocaine residue.

8 Seven, there was a heat sealer in plain
9 view on the floor. Ladies and gentlemen, a heat
10 sealer is not a common object that you buy at
11 Staples.

12 Eight, there was a digital scale with
13 cocaine residue on top of an exposed T.V. stand.
14 This scale, this stand were in plain view.

15 Nine, there was a large garbage bag
16 filled with kilogram wrappers on the ground in the
17 front room. Most people, I submit to you, don't
18 have kilogram wrappers in their garbage.

19 Ten, there was Baking Soda and Peroxide
20 out up on the mantel. These items were not in a
21 closet where you would expect them to be.

22 Eleven, there was another digital scale
23 on an end table, a heat sealer. A digital scale
24 is not a common household item.

25 Twelve, there were cigar boxes out in the

SUMMATIONS - PEOPLE

1 open. These boxes also contained cocaine residue.

2 Thirteen, there were Baggies labeled Red
3 Apple. You heard that labeling bags are routine
4 in the drug trade.

5 Fourteen, there were playing cards with
6 cocaine residue throughout the apartment, cards
7 used to cut cocaine when it's being processed.

8 Fifteen, there were seven additional
9 digital scales and two additional heat sealers and
10 over 1,100 wads of cash in the closet.

11 Sixteen, one of the safes contained
12 cocaine that was prepackaged for distribution.
13 The cocaine was stashed away and ready to be sold.

14 Seventeen, another safe, the second safe
15 had large chunks of cocaine. Over half a kilogram
16 was recovered from this safe.

17 Eighteen, the street value of all the
18 ones cut and put into the half-gram bags was worth
19 over \$20,000.

20 Nineteen, everything in this tiny room,
21 smaller than the jury box, was within 15 feet of
22 the defendant's fingertips.

23 Twenty, the defendant had the key to the
24 room and keys for everything else in the building,
25 too.

SUMMATIONS - PEOPLE

1 Actually, there are 21 overwhelming
2 facts. Twenty-one, the defendant is a convicted
3 felon for possession of a firearm while selling
4 drugs and also for attempting to sell drugs.

5 Defense counsel wants you to believe that
6 the defendant was merely in the wrong place at the
7 wrong time. I admit this is ridiculous.

8 If you are depositing money in a bank and
9 a man comes in with a mask and gun and holds up
10 the bank, that's being in the wrong place at the
11 wrong time. If you are sitting in the car and
12 another car rear-ends you at a red light, that's
13 being in the wrong place at the wrong time. These
14 are random events. These are events that can
15 happen to anybody, anybody.

16 There was nothing random in this case,
17 the case that you are deciding. The defendant
18 made a conscious decision to go to the fourth
19 floor drug stash room. The defendant made a
20 choice to flee from the police when he became
21 aware they were coming his way. If the defendant
22 were innocent, he would have stayed in the
23 hallway. After all, why flee --

24 MR. KEITH: Objection, Your Honor.

25 THE COURT: Overruled.

SUMMATIONS - PEOPLE

1 MR. BERLAND: I admit that people flee
2 from the police when they have done something they
3 should not have done. How many times have any of
4 you or a friend been somewhere when the police
5 have shown up. This is New York, roughly 40,000
6 police officers, there is a huge police presence.
7 So it happens occasionally when the police show
8 up.

9 I submit to you when you go back into the
10 jury room, if you take a poll, not one of you have
11 taken off running if the police have come your
12 way. You do not take off running when you don't
13 have anything to hide.

14 MR. KEITH: Objection, Your Honor.

15 THE COURT: He is allowed to make that
16 argument. The jury can use their common sense and
17 life experience. On the matter of the rule, I
18 will instruct them specifically.

19 MR. BERLAND: Also, ladies and gentlemen,
20 if the police knock on your door, and then open
21 your door, I submit to you you wouldn't sit there
22 silently as the defendant did. You would say
23 wrong place, wrong time, or you would say I was
24 just resting or I was just working, but you would
25 acknowledge the police.

SUMMATIONS - PEOPLE

1 Defense counsel says to you you would sit
2 there quietly or silently like a statue just as
3 the defendant did. He said he would sit there
4 quietly and silently as the defendant did.

5 MR. KEITH: Objection.

6 THE COURT: Keep Mr. Keith out of it. He
7 shouldn't be in it. Overruled with that caution.

8 MR. BERLAND: I submit that you would
9 open the door. Someone with nothing to hide would
10 open the door and acknowledge the police, but you
11 know that the defendant, a convicted drug felon,
12 had plenty to hide with that room.

13 Now, the defendant knew he couldn't leave
14 the building, the police were coming up the
15 stairs. He didn't choose to go to a room on the
16 third floor. He didn't choose the three
17 additional rooms up on the fourth floor. He chose
18 the fourth floor stash room, the drug den. He
19 didn't fall from the sky in the room handcuffed
20 and blindfolded. He chose to go to the room. In
21 fact, he ran past all of the third floor rooms to
22 get up to the fourth floor stash room. This means
23 that he already knew where the stash room was and
24 that he knew he could get in and hide from the
25 police.

YVETTE PACHECO SENIOR COURT REPORTER

SUMMATIONS - PEOPLE

1 I submit to you that there are only three
2 ways that the defendant could get into the fourth
3 floor room. The first is that somebody let him
4 into the room. You know that's not the case
5 because he was all alone in the room when the
6 police got there and there was nobody in the
7 hallway next to the room. Nobody let him in.

8 The second way he could have gotten into
9 the room is if the door was left wide open. I
10 submit to you that there's absolutely no way this
11 happened. Nobody will leave a room open that has
12 \$20,000 worth of cocaine inside of it. Nobody. It
13 absolutely defies logic.

14 Moreover, ladies and gentlemen, nobody in
15 their right mind would leave the door open to a
16 room that is sprinkled, and that is exactly what
17 the evidence shows, that was sprinkled with
18 residue, scales, heat sealers, bags and cutting
19 agents. Nobody would do that. He chose the door.
20 The defendant chose the stash room.

21 What do you know about the building based
22 on the testimony of Detective Hernandez and
23 Detective Romero? You know the ground level door
24 had a lock. You know the main third floor door had
25 a lock. You know the floor fourth floor stash

SUMMATIONS - PEOPLE

1 room where the defendant was arrested had a lock.
2 That means that the defendant had to somehow get
3 through three locked doors to get into the fourth
4 floor stash room.

5 You know how he got into the room. He
6 had the keys to the room clipped to his belt. He
7 had dominion and control over the room. He had the
8 key to the room. He had the key to almost
9 everything else in the building, including the
10 second floor apartment where the actual sales were
11 taking place.

12 The defendant's keys, ladies and
13 gentlemen, are the keys to this case or at least
14 the icing on the cake. Use your common sense.
15 That's why you were selected for this case.

16 I submit to you that the reason the
17 defendant chose the stash room was because of
18 connection to the room, because he and this man,
19 this gentleman, Steven Brown, because he and
20 Steven Brown were acting together in this massive
21 drug information.

22 When he got to the room, he locked the
23 door and sat stone cold in silence, praying,
24 hoping that the police wouldn't find him, but
25 unfortunately for Edward Green they did.

SUMMATIONS - PEOPLE

1 Now, I want to take this one step further
2 for a minute. I submit to you that that's not
3 unreasonable to come to the conclusion the
4 defendant actually placed cocaine in the safe when
5 he became aware that the police were coming his
6 way, when they were coming to the fourth floor.

7 Assume that the defendant had been
8 cutting and packaging cocaine before the police
9 arrived. After all, there was heat sealer under
10 the table, cutting agents and bags within reaching
11 distance of the defendant and residue on the glass
12 table, on the working table.

13 MR. KEITH: Objection, Your Honor.

14 THE COURT: Mischaracterizing the
15 evidence. There is a fine line between
16 speculating and arguing what might be decided to
17 be logical inferences, so I will tell them what
18 inferences are and I'll tell them what speculation
19 is. You are allowed to infer. You cannot
20 speculate.

21 MR. BERLAND: What I'm trying to say in a
22 nutshell, once the defendant realized the police
23 were on that way up the stairs, I cannot ask you
24 to speculate, you can never quite reasonably
25 believe that he took the cocaine and locked it in

SUMMATIONS - PEOPLE

1 the safe. Do not get caught up on the fact there
2 is no direct evidence that the defendant knew the
3 combination of these two safes.

4 Remember, when I asked Detective
5 Hernandez last week when they entered the room, if
6 the defendant had the combination to the safes on
7 his hand, written across his forehead, a few of
8 you laughed. I was trying to make a point.

9 There is absolutely no way to read a
10 person's mind. No special device put on the
11 defendant's head to determine what he or she
12 knows. All we can do to determine what the
13 defendant might or might not know is to look at
14 the surrounding circumstances and determine what
15 makes sense.

16 Obviously, drugs will be kept in a safe,
17 especially when the drugs are worth well
18 over \$20,000. Obviously, a safe with that kind of
19 product, the \$20,000 worth of cocaine is going to
20 be locked. Now, the majority of safes have
21 combinations to open them.

22 To say that there is no way that the
23 defendant had dominion and control over the safes
24 because they were locked in a closet, and that's
25 essentially what the defense wants you to do, to

SUMMATIONS - PEOPLE

1 believe, would mean that any large quantity of
2 drug cases, there would be no way to prove --

3 MR. KEITH: Objection, Your Honor.

4 THE COURT: Sustained as to what the
5 defense wants the jury to believe. Argue what the
6 facts support.

7 MR. BERLAND: The drugs here were in a
8 locked safe. In any large quantity drug case,
9 that's exactly where they'll be, locked up in a
10 safe, especially when it is worth as much money as
11 the cocaine was worth in this case.

12 You have to look at the big picture. You
13 have to look at the surrounding circumstances and
14 that brings me full circle back to the 21
15 overwhelming facts; heat sealer, digital scale,
16 baggies, residue and the defendant had keys to the
17 room.

18 Getting back to this idea of wrong place,
19 wrong time. The defense has not contested most of
20 the facts established by the experienced
21 detectives who testified before you.

22 Yes, he tried to attack the credibility
23 of Detective Romero because of some minor
24 inconsistencies at prior proceedings,
25 inconsistencies which were easily explained by the

SUMMATIONS - PEOPLE

1 detective on the witness stand. I submit to you
2 this is all smoke and mirrors.

3 Stay focused. Don't be fooled. The
4 facts speak for themselves. Defense counsel
5 suggested that Detective Romero, who has been on
6 the force for 17 years somehow dropped the ball
7 because he didn't test the drugs or the keys or
8 anything for fingerprints or DNA. This wasn't a
9 who-done-it. This wasn't like a gunpoint robbery
10 where you have a gun but no suspect. Of course you
11 will test the gun for DNA or fingerprints. That's
12 not the case here.

13 The defendant was sitting in a room with
14 paraphernalia everywhere, everything within the
15 fingertips, the drugs in the safe and he had the
16 keys. This wasn't like a gunpoint robbery a gun
17 and no suspect. Again, stay focused because the
18 facts really are overwhelming.

19 All right, the defense in this case does
20 not contest that half a kilogram of cocaine was,
21 in fact, recovered from the fourth floor stash
22 room or paraphernalia in that room for that matter
23 because the defense accepts that which they cannot
24 deny. It's hard to argue that they were not
25 really plastic Baggies lying around the room,

SUMMATIONS - PEOPLE

1 although they wanted to minimize, or there was not
2 a white powdery substance on the table, although
3 they want you to believe it was Mylanta or
4 lactate, even though none of those were recovered
5 from the room.

6 See, what the defense does deny, ladies
7 and gentlemen, is that in spite of all of the
8 overwhelming paraphernalia and residue in the tiny
9 room and the fact that the defendant had the key
10 to the room, defendant had no knowledge that drugs
11 were being stored in the safe, that he had no
12 access to the drugs, no dominion and control, as
13 the law puts it.

14 Suppose you and I were at a bar and I
15 showed you these pictures. They are not the best
16 pictures. Suppose I showed you the pictures and
17 told you there was a guy caught sitting in the
18 dark on the couch in a tiny room with
19 paraphernalia everywhere, half a kilogram of
20 cocaine in the closet and keys to the building and
21 everything else, and, by the way, a convicted drug
22 felon and he knew nothing about the drugs. You
23 would laugh. You would say, Come on, of course he
24 knew. This was a stash apartment. There's going
25 to be cocaine. There's going to be stash.

SUMMATIONS - PEOPLE

1 Please, please, do not check your common
2 sense at the jury room door.

3 Now, the defense brought out the fact
4 that the defendant, Edward Green, was not the
5 initial target of the search warrant. That's
6 correct. Steven Brown was the initial target.
7 Defense counsel wants you to believe that because
8 Steven Brown was the target, that somehow that
9 exonerates the defendant, but actually, it's the
10 opposite.

11 Detective Hernandez told you last week
12 that the police had information that there was a
13 stash apartment on the upper floors of --

14 MR. KEITH: Objection.

15 THE COURT: Overruled. There was evidence
16 that it was above the second floor somewhere. It
17 is the jury's recollection that controls. If you
18 need the record searched, you want to hear that or
19 anything else, you have the absolute right and
20 I'll explain that to you.

21 MR. BERLAND: If you want to hear
22 anything, you can have it read back. That was said
23 on Thursday, so please take a look at it, that the
24 police had information that drugs were being --
25 sold in the second floor where Steven Brown was

SUMMATIONS - PEOPLE

1 and stored somewhere above the second floor, the
2 upper two floors of the building.

3 You know from Detective Hernandez'
4 testimony that there are sale apartments and there
5 are stash apartments. Second floor apartment was
6 the stash room. The fourth floor room was the
7 stash sale room, and both rooms had surveillance
8 and this is common in the drug trade.

9 MR. KEITH: Objection.

10 THE COURT: Overruled.

11 MR. BERLAND: Steven Brown was arrested
12 in the sale apartment. The boss or higher-up, I
13 submit to you, would never be in the sale room.
14 That's for the workers. The boss would distance
15 himself. The defendant would distance himself from
16 the sale apartment so that he wouldn't be
17 compromised because if someone got access to the
18 operation and told the police, it's likely the
19 police would have information on the seller, the
20 sale apartment. It makes sense.

21 So the defendant is not innocent because
22 the police had information about Steven Brown
23 selling on the second floor. It just shows how
24 both men were acting in concert together to store,
25 package and distribute cocaine. How both men were

SUMMATIONS - PEOPLE

1 in possession of all of the drugs recovered in the
2 two apartments.

3 And listen carefully. I am sure you will
4 listen carefully to the judge when he instructs
5 you on the on the law. Possession, even if joint,
6 is still possession. Edward Green and Steven Brown
7 were possessing and selling cocaine together. I
8 submit it really is that simple.

9 Now the surveillance system. On November
10 1st of last year, only the second floor apartment
11 and fourth floor room were wired for surveillance.
12 No other rooms were wired. You heard from
13 Detective Hernandez and Detective Romero, they
14 testified to that.

15 Now, defense counsel and in his closing
16 arguments stood about 25 minutes talking about the
17 picture introduced into evidence showing all these
18 wires. The defense told you in no way is that
19 evidence. What is evidence is what came from the
20 witness stand from two credible, I submit credible
21 detectives with a combined 40 years on the job.

22 Now, these detectives had never met
23 Steven Brown before November 1, 2007. They had
24 never met Edward Green, the defendant, before
25 November 1, 2007. They had no reason to set

SUMMATIONS - PEOPLE

1 anybody up or frame anybody. They told you about
2 the thousands of search warrants, hundreds of
3 arrests made during the illustrious careers. This
4 is all smoke and mirrors.

5 The defense spent a quarter of the
6 summation trying to cloud the issue by showing
7 pictures, which you do not know, which the
8 detectives don't even know when they were taken
9 because they did not take the pictures. So just
10 please stay focused.

11 I want to talk to you now about the
12 defendant's connection to Steven Brown. His
13 connection to the second floor apartment. You
14 know the defendant had the keys to the second
15 floor, the sale apartment, as well as the fourth
16 floor stash room. Detective Romero told you this
17 on Friday and the keys are in evidence.

18 The fact that the second floor door lock
19 was not vouchered is irrelevant because
20 Detective Romero explained to you why the police
21 didn't take the lock to the second floor. The door
22 to the second floor was wide open when the police
23 arrived at 451 Lenox Avenue, when they were
24 executing the initial search warrants. They didn't
25 need to take the lock. They didn't need evidence

~~SUMMATIONS - PEOPLE~~

1 to show how they opened that door, the second
2 door. He testified it was already open.

3 Moreover, the bulk of the cocaine, half a
4 kilo, more than a pound, greater than 17 ounces
5 was found in the fourth floor room and the police
6 did have to open the room with the key.

7 They obviously, needed fourth floor lock
8 to show how they were able to open the door back
9 on November 1, 2007. They took the lock. It is in
10 evidence. Detective Romero explained it. Counsel
11 spent ten minutes arguing that police have not
12 dropped the bomb by not bringing in the second
13 floor lock.

14 What do you know? You know that Steven
15 Brown opened the fourth floor door and that he had
16 a key to the second floor apartment. I submit, it
17 makes no difference whether the keys were found in
18 Steven Brown's pants, hand or jacket or whether
19 the jacket was in the back of the chair. They were
20 his keys. It's not a contention. The keys opened
21 the door. You know Steven Brown had keys to both
22 rooms and you know Edward Green had keys to both
23 rooms.

24 Ladies and gentlemen, the People's theory
25 of this case is that the defendant, together with

~~SUMMATIONS - PEOPLE~~

1 Steven Brown, possessed all, all of the drugs in
2 both the rooms and that there is only one reason
3 that they possessed all the prepackaged and raw
4 cocaine and that was to sell it. This was a drug
5 operation in the business of selling drugs.

6 Edward Green and Steven Brown possessed
7 all of this cocaine together, all of this cocaine
8 together with intent to sell the cocaine. This is
9 the second charge that you will be asked to
10 consider in a few minutes, whether the defendant
11 possessed \$20,000 worth of cocaine with the intent
12 to sell it.

13 MR. KEITH: Objection.

14 THE COURT: Overruled. Some of all of
15 it. Overruled.

16 MR. BERLAND: You should know there's
17 nothing in the law stating that evidence needs to
18 be presented at the sale or the sale was imminent
19 or that a particular buyer be named. All that is
20 required is that it's proven beyond a reasonable
21 doubt that the defendant's objective was, at some
22 point, to sell that cocaine.

23 I submit to you the only, only possible
24 thing a drug deal here, convicted drug felony does
25 with \$20,000 worth of cocaine, half kilogram of

SUMMATIONS - PEOPLE

1 cocaine is to sell the cocaine. It's a business
2 and the cocaine was a product. I submit that this
3 charge, count two is proven well beyond a
4 reasonable doubt. It's not even a close call.

5 Now, ladies and gentlemen, I submit to
6 you that there is an easy way when you go back to
7 the jury room today to reach a verdict on all
8 counts. It should be clear as day now.

9 You know that Steven Brown was in the
10 sale room and Edward Green was in the stash room.
11 You know that both rooms were wired for
12 surveillance, both rooms had matching Philly cigar
13 boxes, and distinct plastic baggies labeled Red
14 Apple.

15 Yes, they are common bags, as defense
16 counsel told you. They are common in the drug
17 trade. If you go back and look in the cabinets,
18 none of the baggies have Red Apple stamped on
19 them. All right, along with all the other matching
20 paraphernalia had cocaine packaged the same way,
21 half kilogram heat-sealed bags. None of these
22 facts are in dispute.

23 Even though it is the People's position
24 that the defendant was a higher-up in the
25 organization, you can disagree with me and still

SUMMATIONS - PEOPLE

1 convict on everything. You do not need to
2 determine the defendant was the boss. You do not
3 need to determine the defendant was the owner of
4 the apartment. All you need to determine is that
5 he acted with Steven Brown to aid in the
6 possession of drugs. You can convict, even if you
7 find that the defendant was merely aiding in the
8 possession of the drugs.

9 Listen carefully. I will not get into
10 the law. Listen carefully when judge instructs
11 you on accomplice liability or acting in concert.
12 I submit to you that you can infer, at the very
13 least, that he wasn't a worker. He wasn't a
14 buyer. You know he wasn't let in. You know he
15 didn't fall through the sky. You know he was in
16 the stash room for a reason. He let himself in and
17 the keys found clipped to the waist.

18 Let's assume that the defendant didn't
19 know about the drugs in the safe. That's clearly
20 not the case. Assuming he didn't know about the
21 drugs, he'd still be aiding in the possession of
22 drugs because an accomplice in the drug trade,
23 low-level worker doesn't need to possess the
24 drugs, doesn't need to have control over the
25 drugs, just needs to be aiding in the operation.

SUMMATIONS - PEOPLE

1 Knows what that room looked like. You
2 know the defendant wasn't a stranger to the room.
3 He's guilty of everything, even if you think he
4 was just a low-level worker within the operation.
5 Ladies and gentlemen, I submit to you that we --
6 the evidence speaks for itself, and the evidence
7 really is overwhelming.

8 Back to "wrong place at the wrong time"
9 from a moment. Assuming now that the defendant
10 was not a higher-up in the organization. Assuming
11 that he wasn't even a low-level seller that he
12 didn't flee from the police. Assuming he was
13 really looking for a quiet place to take a rest
14 and wanted to chill out on the couch in the dark,
15 or assume for a minute that he really was
16 superintendent of the building. There is no
17 evidence.

18 Assume he was the superintendent of this
19 building and set out to distribute mass quantity
20 of drugs. I submit to you that drug dealers would
21 never give up the keys to a stash room containing
22 \$20,000 worth of drugs to a random superintendent.
23 They would never give up the keys to a complete
24 stranger.

25 Assume for a moment that's the case that

SUMMATIONS - PEOPLE

1 the defendant was working in the room, although no
2 tools were recovered from him. Let's assume he's
3 either sitting there, taking a rest, working in
4 the room and then all of a sudden a group of
5 police officers come battling through the door of
6 that room where the defendant was so peacefully
7 relaxing or working just randomly happen to be
8 half a kilogram of cocaine that the defendant
9 happen to know nothing about. Wow, he really would
10 be one of the unluckiest people in the world. He
11 really did choose the wrong room.

12 Remember the scene in Casablanca where
13 Humphrey Bogart is agonizing over the coincidence
14 of seeing his lost love. Of all the joints in all
15 the town and in all the world, she walks into
16 mine. That's the scene from the room. Of all the
17 stash apartments with paraphernalia and half a
18 kilo of cocaine and all the apartment buildings in
19 all of New York State, the defendant walked into
20 this one.

21 Whoever saw Casablanca, it wasn't a
22 coincidence that Ilsa walked into Rick's Cafe.
23 Just as you know it wasn't a coincidence that the
24 defendant walked into the fourth floor apartment.
25 That would be more likely than getting held-up at

SUMMATIONS - PEOPLE

1 gunpoint in a bank. That would be like getting
2 struck by lightning on a dry, clear 80-degree day.

3 Don't let the defense counsel's lightning
4 and thunder and noise make this seem like a closed
5 case because it's not. The evidence before you
6 really is overwhelming.

7 Taking that one step further, if the
8 defendant just did randomly enter the fourth floor
9 apartment to look for a quiet time, I submit he
10 would have walked out the moment he saw
11 paraphernalia and residue on the processing table.

12 For that matter, if he happen to be in
13 the fourth floor apartment doing work as a super,
14 he would have walked out the second he saw the
15 paraphernalia and residue on the processing table.
16 We are not talking about a 15-year-old kid unwise
17 to the ways of the world.

18 Any reasonable, innocent person,
19 especially one who is familiar with the drug
20 trade, convicted drug felon, would have walked out
21 of that room immediately. Any reasonable innocent
22 superintendent would have walked out of the room
23 immediately. Would be too risky to be in room at
24 any moment. The real drug dealers could come in
25 the door. Drug dealing is a dangerous business. It

~~SUMMATIONS - PEOPLE~~

1 would make no sense to stay.

2 Also, someone who is a convicted drug
3 dealer wouldn't want to be in the room with drugs.
4 What if the police came in? Too risky. Only
5 someone in the organization, someone with access
6 to the room would be in there. Only someone
7 intimately involved in the organization would be
8 in there. Only a drug dealer would be in there.

9 You know, Detective Hernandez testified
10 that this is always the most guarded and secure
11 location, referring to the stash location.
12 Someone who is not involved in the organization
13 like a drug buyer or random superintendent would
14 never be allowed anywhere near the apartment, near
15 the product.

16 How do you think the police get
17 information that drugs are being sold at a secure
18 location? From buyers who, for whatever reason,
19 cooperate or an honest superintendent who has
20 information that drugs are being stored and sold
21 out of a secure location.

22 Also, finally, associates of the drug
23 trade don't want people to know where the \$20,000
24 worth of cocaine is kept. As Detective Hernandez
25 told you, drug-related robberies are common.

SUMMATIONS - PEOPLE

1 That's a lot of product and a lot of money.

2 So the point to you is that only someone
3 with a purpose would be in the stash room. Only
4 someone with access would be in the stash room.
5 Only someone with knowledge of the process would
6 be in the stash room. Only someone with a key
7 into the room would be in there. It really is that
8 simple.

9 The defense suggested that the defendant
10 is from the Bronx. There is a voucher in evidence
11 that states that the defendant is from the Bronx.
12 Detective Hernandez, the vouchering officer, told
13 you that he didn't recover any identification from
14 the defendant. That the defendant told him that
15 he was from the Bronx.

16 I don't think any single one of you would
17 be surprised that the defendant didn't say that I
18 live at 451 Lenox Avenue in this fourth floor
19 apartment, he got me. Nobody is going to say they
20 live in an apartment where over a pound of cocaine
21 is recovered.

22 I submit to you it really doesn't matter.
23 The defendant can be from the Bronx or could be
24 from Bronxville, it makes no difference.

25 132nd Street and Lenox Avenue, it's one stop from

SUMMATIONS - PEOPLE

1 the South Bronx on the 2 or 3 train. Takes 10
2 or 15 minutes to get to Ogden Avenue in the Bronx
3 from Harlem. I'm sure that it takes almost every
4 one of you that long to get to your job, to get to
5 work.

6 No clothes were recovered in the room.
7 Nobody lived in the room. This room wasn't being
8 used as a residence. This was a business
9 operation. This was work. The defendant was
10 clearly a part of the operation. Anyone in the
11 room with the key to the room had to be involved.
12 It's that simple. I want to wrap this up.

13 Assume there is a wife who bursts in the
14 hotel room and inside the room is the husband,
15 standing next to the bed with the pants around the
16 ankle and in the bed is some strange woman. The
17 woman is naked. The husband looks at the wife and
18 says, don't believe your lying eyes. Everybody
19 knows exactly what was taking place in the hotel
20 room. It 's obvious. Just like each and every one
21 of you knows exactly what was taking place in the
22 fourth floor apartment stash room. It's obvious.

23 The defense wants you to close your eyes
24 to the overwhelming facts, but that is not why you
25 were selected as jurors. You now have heard all

SUMMATIONS - PEOPLE

1 the evidence. The lawyers, we have done our job.
2 In a few minutes, the Judge will instruct you on
3 the law, then it is your turn to do your job.

4 I ask you to consider all the evidence in
5 its totality, to follow along and, again, use your
6 common sense. I'm confident that when you do this,
7 you will return the only logical and inescapable
8 conclusion in this case and that is that the
9 defendant is responsible for all the crimes of
10 which he is accused.

11 Please use your common sense and you will
12 see that deciding the case really is as simple as
13 crossing the street.

14 Thank you.

15 THE COURT: This is the point where you
16 are put in a position to do what you agreed to do,
17 decide the case. You are the judges of the facts
18 in the case. In that capacity, you have to decide
19 the facts calmly, deliberately, without fear,
20 favor, compassion, sympathy for everyone.

21 As the sole and exclusive judges of the
22 facts, it is your sworn duty to decide whether or
23 not the defendant's guilt or non-guilt has been
24 established -- I phrased that wrongly. Whether
25 the defendant is guilty or not guilty based on

~~JURY CHARGE~~

1 your assessment of the evidence once you have
2 heard the law.

3 Do not go into the jury room and try to
4 play detective. Do not try to guess what would
5 have or might have been done, what you would have
6 done if you had been involved in earlier stage of
7 this case.

8 It is your recollection and understanding
9 and evaluating of the evidence that controls here,
10 regardless of what either of the lawyers may have
11 said in the closing arguments.

12 Do not consider anything which I have
13 said or done during trial as having any indication
14 of my opinion or whether or not the defendant is
15 guilty or not. My job is not to have an opinion.
16 I don't have one. I don't care. I get paid
17 irrespective of what you do.

18 I do not have the power to tell you what
19 facts are there. No power to tell you what
20 witnesses were truthful or not truthful. Those are
21 the matters exclusively within your province as
22 has been the facts in various places for over
23 500 years.

24 You're not bound to accept any fact the
25 lawyers made known as the summations. If you

JURY CHARGE

1 found an argument is reasonable, logical and
2 consistent with the evidence, then you may accept
3 the argument and use it as you deem appropriate in
4 the jury room.

5 The contrary is, of course, true. If you
6 think that something suggested to you was not
7 reasonable, not logical, was inconsistent with the
8 evidence, then disregard it, you have no choice.
9 Though, you must follow whatever the law turns out
10 to be.

11 It is obvious that in the relying on the
12 law, you cannot rely on it or follow it unless you
13 understand it. If there is a doubt during
14 deliberations about the meaning of the law, you
15 ask me to clarify it or amplify it through a note
16 from your foreperson. Do not tell me whether or
17 not you've taken a vote. Do not tell me your
18 vote. Tell me what the question is with respect
19 to the law.

20 Additionally, as you heard referenced, if
21 there is a dispute about facts, you have another
22 option that's not available with respect to law.
23 You guys, you jurors, you citizens, clients of
24 mine, have the option of consulting among
25 yourselves within the jury room if there is an

JURY CHARGE

1 absence of recollection or uncertainty about the
2 testimony or what the facts are. You do not have
3 the same choice about resolving the law. If there
4 is an uncertainty about the law, ask me.

5 With regard to facts, you have two
6 options. You may consult among yourselves in an
7 effort to refresh your recollection or you have
8 the absolute right to ask me again through a note
9 from the foreperson to ask the court reporter to
10 read the testimony that you are interested in.

11 If you are going to ask for testimony,
12 however, be as specific as possible. Not only
13 what witness, but specify the testimony, being it
14 direct only, cross-examination only, anything the
15 witness had to say, indeed anything that anyone
16 had to say. Be as specific as possible.

17 This is not an instantaneous process.
18 There will be a pause. Not long. Understand that
19 as soon as you give us the note, we're not going
20 to bring you out immediately to read the
21 testimony. She has to find it and I have to
22 consult with the lawyers.

23 With regard to credibility, you analyze
24 credibility in the same way you analyze the
25 credibility of someone with whom you have no

~~JURY CHARGE~~

1 history, stranger who speaks to you about
2 something important.

3 In analyzing testimony, you have the
4 right to decide whether or not the person is being
5 candid. The right to decide whether the person is
6 recounting something through which they lived or
7 trying to remember a version of events either they
8 agreed on or told to say or something like that.

9 With regard to whether somebody is
10 telling truth, try to figure out what is in it for
11 them, if anything.

12 Is there a motivation to tell the truth
13 or not tell the truth?

14 What is the way that they answered
15 questions depending on which side was asking the
16 questions?

17 Did you detect a difference in the manner
18 or content or fact of a response during the course
19 of questioning by either side?

20 Did the version of events seem to make
21 sense to you as life is in New York?

22 Did it appear to be reasonable, logical,
23 you're comfortable relying on it?

24 Was the witness unusual, friendly,
25 hostile?

JURY CHARGE

1 Did the witness give a trustful and
2 reliable account?

3 Is the witness' testimony supported or
4 contradicted by something?

5 Did the witness seem to be biased,
6 prejudiced or have a reason to falsify?

7 There are many aids in deciding whether
8 or not someone is telling the truth and you can
9 use what you know of that which you use in your
10 everyday life. There is no rule just because you
11 are jurors you must evaluate somebody's account of
12 what happened differently than if you heard the
13 account outside the courtroom.

14 Consider the personalities and
15 background, the demeanor, bearing on the witness
16 stand. Whether the account given by the witness
17 was reasonable or unreasonable. The means of
18 knowledge. The opportunity to observe what
19 happened.

20 Ask yourselves, was the witness' account
21 supported or contradicted by another evidence. Ask
22 whether or not the witness had an interest or lack
23 of interest in the outcome. Consider whether
24 there is a motivation, as I said, to tell the
25 truth or not. You can also consider whether any

JURY CHARGE

witness has received some advantage or benefit.

When you assess a witness, did the witness testify truthfully regardless of whatever else was going on? Consider whether the witness' account sounded probable or improbable, and any testimony you find helpful, you can use it.

In your deliberations, if you find that any witness has willfully testified falsely as to a material fact, you may disregard the person's entire testimony on the theory that you caught the person in a lie under oath. You have two options. You can say we will not believe anything the person has to say, the oath doesn't mean anything because we're certain they lied about the matter. If the matter is material and important, you can say the hell with them or you have an absolute right to say well, we will not accept this but accept other parts. That is a factfinding function that you folks can do.

If you find the rule that I just said, somebody lied materially about something, you can disregard the entire testimony or you can say that you will accept other portions of it.

It is the quality and not the quantity of the testimony that must control. That rule,

~~JURY CHARGE~~

1 quality, not quantity is the reason why the
2 Federal Courts and all of the 50 state courts
3 within the United States had the same rule, the
4 one I'm about to give you.

5 If the testimony of one person is
6 sufficiently persuasive that that one person's
7 testimony enables the People to meet their burden
8 of proof beyond a reasonable doubt, then the
9 circumstances of testimony of one person is
10 sufficient to be a conviction.

11 Police testimony was given to you here.
12 The rule is that you know from jury selection you
13 cannot believe or disbelieve somebody because of
14 their occupation as a police officer. Somebody
15 who is a police officer is not presumed to be
16 either more or less credible than somebody with a
17 different occupation.

18 You heard testimony with respect to
19 statements made in earlier proceedings that was
20 given to you under that rule that I described to
21 you. The reason that that is done is on your
22 assessment of credibility as it relates to those
23 decisions that you are supposed to make.

24 When I said and when the lawyers were
25 allowed or Mr. Keith was allowed to elicit

JURY CHARGE

1 testimony that was given in an earlier occasion,
2 that earlier occasion testimony is not evidence in
3 this case. If, in fact, according to the
4 instructions that I gave you, if you decide that
5 it is at variance with what the witness said in
6 court, you can use it in your assessment of the
7 credibility of that witness with respect to the
8 material decisions that you have to make.

9 With regard to that kind of analysis, as
10 I alerted you, some inconsistencies are
11 meaningless, some are stark. That's the sort of
12 fact decision that's within your province to make.

13 The fact that the defendant did not
14 testify is not a factor from which any inference
15 adverse to him may be drawn. That rule is without
16 exception. That is a different rule than the
17 reference to not answering the door or
18 acknowledging the knocking of the police.

19 It is up to you to decide whether you
20 want to draw inference adverse to Mr. Green if you
21 find that the police knocked, if you find that he
22 was in the room, if you find that he heard the
23 knock and if you find that he didn't do anything
24 in response to it. That is for you folks to
25 consider.

JURY CHARGE

1 You have the option of saying if you find
2 that it was factually in that position, that he
3 heard, was there, he didn't do anything, then you
4 can do whatever you want as far as drawing an
5 inference adverse to him. That is, as I said, in
6 complete and total contrast with respect to his
7 not testifying. Two completely different rules.

8 With regard to Mr. Green, he's presumed
9 innocent. The presumption remains with him through
10 the trial. He's protected by the presumption of
11 innocence unless and until the assistant and the
12 evidence in this case has satisfied you that he
13 should be found guilty of one or more of the
14 charges with which he stands accused. The only way
15 that the presumption can be destroyed is if all of
16 you agree on the evidence in the case that he is
17 guilty. Only then is the presumption of innocence
18 destroyed.

19 The burden of proof remains upon the
20 prosecution. It never shifts to the defendant.
21 Each element of the crime committed must be proven
22 beyond a reasonable doubt. That's the standard.
23 It is not beyond all possibility of doubt, not
24 beyond a shadow of a doubt. The standard is known
25 as "beyond a reasonable doubt."

YVETTE PACHECO SENIOR COURT REPORTER

JURY CHARGE

1 Proof beyond a reasonable doubt is the
2 standard American burden of proof in any criminal
3 cases. Those about which you hear testimony,
4 those about which you heard and never hear about,
5 those that result in guilty verdicts or findings
6 of not guilty.

7 Before you may convict the defendant,
8 each of you must be satisfied from the evidence
9 that the defendant is guilty beyond a reasonable
10 doubt of a charge as you consider the charges as
11 you go through them as they'll be listed on the
12 verdict sheet.

13 The evidence must satisfy you beyond a
14 reasonable doubt that he is, in fact, the person
15 who committed the crime in accordance with the
16 instructions that I will describe about the alone
17 or in concert and the evidence must established
18 beyond a reasonable doubt each of the elements of
19 the crime charged.

20 What does a doubt of guilt mean? A doubt
21 of the defendant's guilt to be a reasonable doubt
22 must arise because of the nature and quality of
23 the evidence or because of the lack or
24 insufficient evidence.

25 A doubt of guilt is not reasonable if

JURY CHARGE

1 instead of being based on the nature and quality
2 of the evidence or lack or insufficiency of the
3 evidence, it's a based on a guess, whim,
4 speculation not related to evidence in the case.

5 Also, a doubt of guilt is not reasonable
6 if it's based on sympathy for the accused or a
7 mere desire by a juror to avoid performing a
8 disagreeable duty. A doubt of a defendant's guilt
9 to be a reasonable doubt must arise because of the
10 nature and the quality of the evidence or lack or
11 insufficiency of the evidence.

12 Your first duty is to review all of
13 evidence in the case and decide what happened.
14 Next duty is to decide if you have a reasonable
15 doubt with regard to the elements and the proof of
16 the elements.

17 A reasonable doubt is an actual doubt,
18 one you are conscious of having in your mind after
19 having carefully considered all of the evidence
20 and after doing so you feel uncertain or not fully
21 convinced that the defendant is guilty, then
22 that's a reasonable doubt, and the accused is
23 entitled to the benefit of it.

24 Review the evidence and decide what
25 happened. If after doing so you find that the

JURY CHARGE

1 People have not proven the defendant's guilt
2 beyond a reasonable doubt, then you must find the
3 defendant not guilty. On the other hand, if you
4 are satisfied that the People proved the
5 defendant's guilt beyond a reasonable doubt, then
6 you should find the defendant guilty.

7 You have heard me say with respect to the
8 reasonable doubt charge and the charge with
9 respect to when and only when the presumption of
10 innocence is destroyed. It is that the
11 prosecution's burden in this case and every
12 criminal case in United States history is to prove
13 the elements of the crime beyond a reasonable
14 doubt, not other things, the elements.

15 My suggestion to you is, which of course
16 as a juror you can reject, focus on the factual
17 decisions you need to make to determine whether or
18 not the prosecution has proven the elements of the
19 charges, as you consider the four charges as we go
20 through them, beyond a reasonable doubt, and leave
21 for some other day any discussion about things
22 that are not necessary for you to decide whether
23 they've proven the elements of the crime beyond a
24 reasonable doubt.

25 Now, with respect to the four charges,

JURY CHARGE

1 there is a verdict sheet. There are four charges.
2 I will now explain to you the theory of the
3 People's case, incontroverted idea what possession
4 is, both physical and constructive possession and
5 then tell you the elements of the four charges.

6 Possession. New York's definition of
7 possession is that possession is either actual or
8 physical. Things that you have around your neck,
9 in your pocket, in your hand, that's physical
10 possession.

11 You have a variety of other things that
12 are in your possession but that you didn't bring
13 with you this morning. They are what is known as
14 constructive possession.

15 If you are rich enough to have a safe
16 deposit box, that's an example of constructive
17 possession. If you have a drawer in your
18 apartment, if you have anything that you don't
19 have with you, but meets the definition of what's
20 known as dominion and control, then you are in
21 constructive possession of that material.

22 A person may have physical possession of
23 a thing by holding it in their hand or carrying
24 around on his or her body or person. A person may
25 exercise dominion and control over property not in

JURY CHARGE

1 his or her physical possession.

2 A person who exercises dominion and
3 control over property not in their physical
4 possession is said to have the property in his or
5 her constructive possession.

6 A person has tangible property in his or
7 her constructive possession when that person
8 exercises a level of control over the area in
9 which the property is found or over the person
10 from whom the property is seized sufficient to
11 give him or her the ability to dispose of the
12 property.

13 The law recognizes the possibility that
14 two or more individuals can jointly have property
15 in their constructive possession. Two or more
16 persons have property in their joint constructive
17 possession when they each exercise dominion and
18 control over the property by a sufficient level of
19 control over the area in which the property is
20 found or over the person from whom the property is
21 seized to give each the ability to use or dispose
22 of the property.

23 You should understand with respect to
24 this constructive possession concept, the mere
25 presence even with knowledge is insufficient and

JURY CHARGE

absent the exercise of what's known as dominion and control, but you can constructively possess that which you do not touch.

Accessory liability, joint responsibility, in concert, commission a crime by more than one person, those are different ways of pointing out that the law says that there are some circumstances under which one person, even a person on trial, can be liable for what another person may have done or did do.

The law says that two or more individuals can act jointly to commit a crime. Then, under certain circumstances, each can be held criminally liable for the act of the other. That's referred to as the in-concert idea.

Formally, it's stated that when one person engages in conduct which constitutes a crime, another person is criminally liable for such conduct when either acting with the state of mind required for the commission of that offense, he solicits, requests, commands, importunes a person to commit a crime.

So that would be one of the two ways you would be liable. That is if you give some direction, some verbal command, request. The other

JURY CHARGE

1 is if you do a physical act intending to aid the
2 other person in the commission of the conduct.
3 It's either one of those things is a possible way
4 that you could be in concert with somebody else.

5 I'll read it again. When a person
6 engages in conduct which constitutes an offense
7 another is criminally liable for such conduct when
8 acts with the state of mind that is required for
9 the commission of that offense, he solicits,
10 requests, commands, importunes the other person to
11 do the offense or intentionally aids that other
12 person to engage in conduct which constitutes or
13 assists in that offense.

14 Under that definition, the mere presence
15 at the scene of the crime, even with knowledge
16 that the crime was taking place or mere
17 association with somebody, does not, by itself,
18 make a defendant criminally liable for the crime.

19 In order to be held criminally liable for
20 the conduct of another which constitutes a crime,
21 you must find beyond a reasonable doubt that the
22 defendant whose case you are considering, either
23 solicited, requested, commanded, importuned,
24 importuned means to urge, in this case Mr. Brown,
25 you'd have to find that Mr. Green solicited,

JURY CHARGE

1 requested, commanded, importuned or urged
2 Mr. Brown to do acts that constitute the crime or
3 that Mr. Green intentionally aided the person,
4 Brown or others, to engage in that kind of
5 conduct, conduct which constitutes the crime with
6 which he is charged.

7 That's the first thing the People have to
8 prove beyond a reasonable doubt in order for him
9 to ask you to use the in-concert concept against
10 Mr. Green.

11 The second thing they have to prove
12 beyond a reasonable doubt is that Mr. Green was
13 acting with a mental state that the law says has
14 to be present on the part of somebody who is
15 liable for a drug offense, which is in one sense,
16 one instance, knowledge, and with another instance
17 that I will describe to you, intent.

18 That Mr. Green, depending on what crime
19 you are considering, had knowledge and then had
20 the intent that with the state of mind required
21 for the offense, he intentionally did something,
22 anything which assisted in the commission of the
23 offense.

24 If it's proven beyond a reasonable doubt,
25 of course, he has to, with regard to in the

JURY CHARGE

1 supposed intentionally aiding and if you think he
2 did something that's established by voice, he has
3 to do it while he had the mental state, whether
4 knowledge or intent, that the statute requires.

5 If it's proven beyond a reasonable doubt
6 that the defendant is criminally liable for the
7 conduct of another, the extent or degree or amount
8 that the defendant participated in the crime does
9 not matter.

10 A defendant proven beyond a reasonable
11 doubt to be considerably liable for the conduct of
12 another in the commission of a crime is not as
13 guilty of that crime as if the defendant
14 personally, himself, had committed every act
15 constituting that crime.

16 The People have the burden of proving
17 beyond a reasonable doubt that the defendant acted
18 with the state of mind required for the commission
19 of the crime, and he either personally or by
20 acting in concert with another person, committed
21 each of the remaining elements of the crime.

22 Your verdict, whether guilty or not
23 guilty, must be unanimous. In order to find the
24 defendant guilty, you need not be unanimous on
25 whether the defendant committed the crime

JURY CHARGE

1 personally or by acting in concert with another or
2 both.

3 The People contend that the defendant
4 acted in concert with Mr. Brown. You must not
5 speculate on the present status of that person or
6 draw any inference from the absence. Do not allow
7 the absence to influence the verdict. You are
8 here to decide whether or not the People have
9 proven beyond a reasonable doubt one or more of
10 the crimes with which Mr. Green is charged.

11 With respect to the in concert idea, if
12 the prosecution is going to be successful in
13 asking you to attribute Mr. Green to any of the
14 acts that Mr. Brown did, they have to prove two
15 things beyond a reasonable doubt.

16 The first is that Mr. Green, independent
17 of whatever Mr. Brown may or may not have done,
18 independently, on his own, had the mental state
19 that the statute has described as having to be
20 present by somebody committing the drug offenses I
21 will describe.

22 Second, the People have to prove beyond a
23 reasonable doubt that he either gave a voice,
24 command or voice direction or something by voice
25 or that he intentionally aided, in any manner at

JURY CHARGE

1 all, Mr. Brown in the commission of the offenses
2 contained in the charge.

3 The charges are four different references
4 to the concept of possession. There is nothing in
5 here about ownership. The charge is possession.

6 As you heard, since these are prohibited
7 substances, under all or some circumstances,
8 depending on whether we're talking about cocaine
9 or paraphernalia, you cannot own prohibited or
10 contraband substances. So the law refers to that
11 as possession.

12 Possession can be individual or joint by
13 people in accordance with the constructive
14 possession charge that I just gave.

15 With regard to the drug charges, the
16 first one is going to say possessed in excess of
17 eight ounces. It's eight ounces irrespective of
18 whether it's mentioned with anything.

19 Let's say you went to the beach with a
20 small container of heroin and you picked up a
21 gargantuan amount of sand and dumped it into the
22 container you had. You're responsible for
23 basically whatever the mixture's weight is. You do
24 not need to be concerned with respect to purity or
25 how much may be something else.

JURY CHARGE

1 Whether it be possession with intent to
2 sell, second count, or possession in the first
3 degree, which is the first count, the first count
4 in excess of eight ounces, the second count being
5 possessing any amount of cocaine intending to sell
6 some or all of it, the purity, the percentage of
7 cocaine, the weight doesn't matter.

8 A person is guilty of Criminal Possession
9 of a Controlled Substance in the First Degree when
10 that person, alone or in concert, but the mental
11 has to be individualized, when that person
12 knowingly, unlawfully possesses one or more
13 preparations, compounds or mixtures or substances
14 containing a narcotic drug and the aggregate
15 weight, overall total weight, is eight ounces or
16 more. I said in excess of eight ounces. It is
17 eight ounces or more.

18 Allegation is what you have heard.
19 Possess means either actual or constructive. A
20 person knowingly possesses a controlled substance
21 when that person is aware that he is in
22 possession, alone or in concert of that substance.

23 Awareness has to be individualized. The
24 physical or constructive possession would be
25 individual or joint. The mental always has to be

JURY CHARGE

1 present on the part of each and every person
2 supposedly involved.

3 There are three elements with respect to
4 the first count in the indictment.

5 First, that on or about the date in
6 question, which is November 1, 2007, in New York
7 County, the defendant, Mr. Green, possessed one or
8 more preparations, compounds, mixtures containing
9 cocaine.

10 Second element, did so knowingly and
11 unlawfully.

12 Third, that the aggregate weight was
13 eight ounces or more.

14 If the People prove those three elements
15 beyond a reasonable doubt, you must convict, you
16 have no choice. If they fail to prove any one more
17 or all, you must acquit, you have no choice.

18 With regard to second count, possession
19 in the third degree, basically has two elements.
20 There's no weight concept. It's any amount of
21 cocaine. Defendant had to have known that he was
22 in possession of any amount of cocaine found
23 either on the second or fourth floors and that he
24 possessed, either alone or in concert, any of the
25 cocaine wherever in that building it was found,

JURY CHARGE

1 intending that he or another sell some of it.

2 The charge is possession, knowing
3 possession, knowing possession of cocaine
4 intending that he or someone else sell any of the
5 cocaine supposedly possessed.

6 Sell, the most basic definition,
7 transfer. There is no requirement in New York law
8 with respect to the concept of sale, that you get
9 anything back of value. No requirement that you
10 get by way of money back. Definition of sale is
11 simply a transfer.

12 So the second charge, the second degree
13 count of the indictment is that the defendant,
14 alone or in concert, possess cocaine found
15 anywhere in the building intending that he or
16 another person with whom supposedly was in
17 concert, intended to sell, that is to transfer,
18 whether for value or not, any of the cocaine.

19 Now, the third and fourth charges are
20 related to drug paraphernalia. As I alerted you
21 probably during jury selection, there is a slew of
22 variety things which are valid things for which
23 you don't need a license. You can hide it or do
24 anything with. What's valid? A kitchen knife,
25 handkerchief. With respect to what supposedly is

JURY CHARGE

1 the drug paraphernalia, that constitutes the third
2 and fourth counts.

3 Premise is that things are absolutely
4 validly possessed, they have lawful usefulness, as
5 well as under some circumstances the law says
6 their possession and use will become illegal.

7 The third charge relates to the supposed
8 packaging material and the fourth count relates to
9 the supposed weighing material. I'm going to read
10 the law once to you. I will not read it both with
11 respect to third count which is the materials
12 supposedly for packaging and the fourth count
13 supposedly scales.

14 The charge of the law is this. A person
15 is guilty of something known as criminally using
16 drug paraphernalia in the second degree when that
17 person knowingly possesses scales and balances
18 used for the purpose of weighing or measuring
19 controlled substance under circumstances - they
20 use the word evincing. I don't know who they're
21 writing for.

22 Evincing means showing, demonstrating.

23 Under certain circumstances, showing or
24 demonstrating an intent to use the items or
25 circumstances showing that some person intended to

JURY CHARGE

1 use the items for the purpose of unlawfully
2 manufacturing, packaging or dispensing of any
3 narcotic drug.

4 You know what the definition of possess
5 is. It is referred to here. You know what the
6 definition of sale is. It is referred to here
7 also.

8 I haven't spoken about intent, and I
9 haven't defined knowledge. Knowledge is what you
10 are consciously aware of. An intent is your
11 conscious objective or purpose. Both concepts are
12 mental. They go on within the sanity of our mind.

13 No legal system, no fair legal system is
14 personalized, person's hard thought only. Any
15 fair system requires the prosecution to prove
16 action in conjunction with thought, and so with
17 regard to fair systems and ours certainly is going
18 back seven thousand years or so, fair systems have
19 sought to require a government authority to prove
20 what somebody was thinking.

21 And so how is it accomplished? The law
22 give us two basic rules that you may or may not
23 use, depending on whether you think the
24 circumstances you are dealing and facts you are
25 dealing with make sense or not.

JURY CHARGE

1 What I am talking about is the following.
2 You can decide what a person does, says before,
3 during or after an event as an indicator of what
4 they knew or intended during the course of an
5 event and you can also conclude, if you choose to,
6 not obligated to, that a person intended or knows
7 the natural and logical consequences of what they
8 do.

9 Also, the law requires with regard to
10 intent and knowledge that the intent and knowledge
11 be present at the doing of the act, but no
12 requirement for how long before the doing of an
13 act the intent or knowledge has to be present.

14 You may have heard many times reference
15 to premeditation, which means you thought about it
16 for a long time and planned it out. New York law
17 here doesn't refer to premeditation. What it does
18 refer to is that the mental state to which I made
19 reference now several times, intent and knowledge,
20 be present at or before doing of the act, but no
21 specific period of time before the doing of an
22 act.

23 Additionally, with regard to intent and
24 knowledge, the law requires that the intent to
25 commit the crime and knowledge that a certain

JURY CHARGE

1 thing is going on and you are participating in it
2 in some fashion, the law requires that that be
3 present.

4 But the fact that the mind is marvelous
5 and gets us to the moon and knocked the Trade
6 Center towers down, that means more than one thing
7 can be present simultaneously or many things
8 sometimes seem within the mind of a person when
9 things are occurring.

10 The law doesn't say that the only thought
11 or only bit of intention that you have is the one
12 distributed towards the criminal offense at issue
13 here. The law says that irrespective of whatever
14 else you knew, intended, whatever else is going
15 on, the People have to prove beyond a reasonable
16 doubt the knowledge and intent factors I just
17 described.

18 With regard to the three elements of
19 possessing drug paraphernalia, first is that on or
20 about November 1, 2007, in New York County, the
21 defendant possessed, as New York defines
22 possession with regard to the third count, the
23 defendant possessed packaging material. Second is
24 that the defendant did so knowingly, and the third
25 that the defendant did so under circumstances

JURY CHARGE

1 showing an intent for him to use or under
2 circumstances showing knowledge that some other
3 person would use those items for the packaging of
4 unlawful substances, manufacturing, packaging or
5 dispensing.

6 The three elements are identical with
7 regard to the fourth count, which says not
8 packaging but scales. When considering the third
9 and fourth counts, the People are required to
10 prove the three elements beyond a reasonable
11 doubt. If they prove all three, you must convict,
12 you have no choice. If they fail to prove any one
13 more or all, you must acquit.

14 The same thing applies with respect to
15 the fourth count. The People must prove each
16 element beyond a reasonable doubt. If they do,
17 you must convict. If they fail in any one more or
18 all, you must acquit, you have no choice.

19 With regard to deliberations, you are to
20 deliberate, participate in the deliberations,
21 exchange your views, your reasons.

22 The election which is looming and which
23 we just had a primary, elections are decided close
24 or landslides. Criminal cases are decided
25 unanimously. The group that votes and resolves

JURY CHARGE

1 elections never does it unanimously. Yet, with
2 rare exceptions, charges in a criminal case are
3 unanimously resolved, either proven or not proven.

4 How is it people, essentially the same
5 pool, producing the eclectic jury pool, how do
6 they come to markedly different results by
7 different reasons, different methods?

8 Well, with regard to jury service and
9 deliberations, you are allowed to change your mind
10 from a position you may have taken. You are
11 allowed to change your mind if somebody based on
12 reason, logic, common sense and reliance out on
13 the record of this case which can cause you to
14 change your mind.

15 Do not change your mind for embarrassment
16 or that it became public. If you are found out to
17 have decided the case because you wanted to get
18 out of here, you didn't like what somebody said,
19 you were insulted, offended, well, that's not a
20 reason to change your mind.

21 The point is, before the foreperson
22 announces the collective verdict of the jury, it
23 has to be individually, consciously arrived at by
24 each of the 12 voting jurors.

25 I have to speak briefly with the lawyers

————JURY CHARGE————

1 and then you will be on your way.

2 (Whereupon, a sidebar conference was held
3 on the record out of the hearing of the jury.)

4 THE COURT: Any exceptions or requests?

5 MR. KEITH: Yes, Your Honor. I see you
6 do not like the CJI charges.

7 THE COURT: I do.

8 MR. KEITH: Well, before I get into that,
9 let's first talk about the charge with regard to
10 the activity or lack of activity in the room. I
11 don't believe you ever stated that he was not
12 obligated to open the door. You basically told the
13 jury that they would infer what they want.

14 THE COURT: You're right.

15 MR. KEITH: I'm very concerned about that
16 because in Headley, the Court of Appeals
17 specifically said that the failure to open the
18 door does not amount to an inference of criminal
19 intent. I know you don't necessarily agree with
20 that, that's the Court of Appeals. That's the
21 specific language from the case.

22 THE COURT: Okay. My point is this is a
23 different case. I don't think that what they
24 would say there they would say here. But we'll
25 have to wait to see if he's convicted. So far

JURY CHARGE

1 you're right that I didn't specifically -- I was
2 so thrilled that I had the example and the
3 contrast of an accused not testifying at a trial
4 and no inference, that I was so thrilled that I
5 decided to forget. Apparently, I forgot about it.
6 They're not obligated but could draw the
7 inference. I correct that. I apologize.

8 What's next?

9 MR. KEITH: You described a sale as a
10 transfer. I think CJI --

11 THE COURT: How does that apply here?
12 How do I have to say anything more about what a
13 sale is in this case?

14 MR. KEITH: I gather you would be
15 accurate as opposed to just saying it's a simple
16 transfer.

17 THE COURT: I'm not going to read the
18 charge on that. What else?

19 MR. KEITH: You were talking about
20 ownership. You said to the jury that if he is not
21 an owner, they can still convict.

22 THE COURT: I told them to disregard the
23 idea of ownership, because in life basically, you
24 can have one owner, but 55,000 possessors. There
25 is no, at least in New York State's prohibition,

~~JURY CHARGE~~

1 they do not refer to the concept of ownership.

2 The easiest example, a factory. If the
3 People prove the elements, whether you're a
4 one-day half-hour worker in the factory or the
5 Columbian sitting offshore reaping the profits,
6 you can be convicted, you could be liable, and
7 nobody carries whose the, quote, owner, which is
8 an impossible legal concept.

9 You can't have title to drugs. That's
10 what I was taking about. After 25 years, nobody
11 has taken me to task on that one yet.

12 What else?

13 MR. KEITH: You didn't follow the CJI
14 charge on credibility or evaluating the testimony
15 of police witnesses, but I can't recall a specific
16 language you used. I just throw that out there.
17 I'm not sure -- I think if you had just read the
18 charge, it would have been fine, but ...

19 I, again, move for a mistrial. I think
20 overall Mr. Green has been dealt an unfair trial.

21 MR. BERLAND: There's nothing the People
22 would like to add regarding the charge.

23 (Whereupon, the sidebar conference
24 concluded and the proceedings continued in open court
25 as follows:)

JURY CHARGE

1 THE COURT: Okay, there was one thing I
2 promised I would say. I forgot. With regard to
3 Mr. Green, he's not obligated to open the door,
4 but you can draw an inference in accordance with
5 the People's argument if you choose to. You cannot
6 possibly draw any inference from his not
7 testifying here ...

8 The two alternates, stay right there. I
9 have instructions for you. With regard to the 12
10 first jurors, this is the point at which the
11 admonition about keeping an open mind is over.
12 Not talking about it is over. This is not the
13 point you discuss it, but you decide it. Your
14 lunch should be here within a few minutes. We
15 await your verdict or communication. Please step
16 in and good luck. The verdict sheet will be in
17 with you in a few minutes.

18 (Jurors begin to deliberate.)

19 (Whereupon, a sidebar conference was held
20 on the record out of the hearing of the jury.)

21 THE COURT: With respect to the
22 alternates, should we have a chat, and with
23 respect to the evidence.

24 MR. KEITH: No objection to the jury
25 examining the evidence. I would ask that we hold

PROCEEDINGS

1 the alternates through the lunch break.

2 THE COURT: Fair enough.

3 (Whereupon, the sidebar conference
4 concluded and the proceedings continued in open court
5 as follows:)

6 THE COURT: We'll feed you. With regard
7 to this case and I would suggest politics and
8 religion, those three topics you shouldn't chat
9 about. Do not talk about the case and the rules.
10 If one has to go in, you should be going in with
11 your thoughts and not somebody's else. Do not talk
12 about the case. If you have reading material,
13 that's fine. If you don't, we'll find you
14 something. Just tell us.

15 MR. KEITH: I apologize. On second
16 thought, the alternates can be excused.

17 THE COURT: Have a nice life. You are
18 excused.

19 (Whereupon, a lunch recess was taken,
20 after which the following proceedings took place:)

21 THE CLERK: Recalling case number one,
22 Edward Green.

23 THE COURT: There is a note that they
24 want the charges on the elements. They also asked
25 something to the effect, I will read the note when

PROCEEDINGS

1 the jury comes out, too, it says something to the
2 effect, Does dominion and control, does it happen
3 because you are in the apartment? Are you
4 responsible for everything in and around the
5 apartment if you have dominion and control over
6 the apartment? The answer of course is no. Does
7 anybody know where that note is?

8 (Handed.)

9 THE COURT: Clarification of elements for
10 charge. Next, if you have dominion and control
11 over space, that is an apartment, do you
12 automatically have control over everything in the
13 room, locked and or unlocked. I just said no.
14 They will have to make separate decisions about
15 that stuff.

16 Anything anyone wants to say?

17 MR. BERLAND: No, Your Honor.

18 THE COURT: Mr. Keith.

19 MR. KEITH: No, Your Honor.

20 THE COURT: Bring in the folks.

21 COURT OFFICER: Jury entering.

22 THE COURT: The note that you may not
23 have seen or may have forgotten about asked to
24 clarify the three elements per charge. Then it
25 asks if you have dominion and control over a

PROCEEDINGS

1 space, that is an apartment, do you automatically
2 have control over everything in the room locked
3 and unlocked.

4 First thing I will do is give you the
5 three elements or the element, rather, of the
6 charges.

7 First, with regard to count one, alone or
8 in concert; possession, physical or constructive,
9 over eight ounces of cocaine or more.

10 The possession has to be knowing, has to
11 be individual knowledge on the part of anybody
12 accused, that they are in possession, as New York
13 defines possession, of eight ounces or more of
14 cocaine. Possession that is to be knowing, aware
15 it's cocaine and the cocaine has to be eight
16 ounces or more. That's the first count.

17 The second count, alone or in concert,
18 fourth floor, second floor, combination of the
19 floors, the defendant possessed any amount of
20 cocaine knowing that, alone or in concert, he
21 possessed cocaine irrespective of the weight, the
22 purity of the amount, and that he possessed it
23 alone or in concert, intended to sell some or all
24 of it.

25 Definition of sell is a transfer. There

PROCEEDINGS

1 are other definitions, but the basic definition is
2 a transfer. The elements of those two charges, we
3 need a verdict on both.

4 The elements, each of them have to be
5 proven beyond a reasonable doubt by the
6 prosecution. If the prosecution fails in any one
7 or all of the element, your verdict has to be not
8 guilty.

9 The third and fourth count are possession
10 of drug paraphernalia. Things under ordinary
11 circumstances are perfectly legal. The accusation
12 is that under the circumstances that the People
13 claim they have proven the possession is illegal
14 by virtue of the nature of and what the People
15 have shown to the person using drug paraphernalia
16 in the second degree.

17 If I said criminal possession of drug
18 paraphernalia, I was wrong. It's criminally using
19 drug paraphernalia in the second degree, when that
20 person, knowingly possesses scales or balances
21 used for the purposes of weighing controlled
22 substances on circumstances showing or
23 demonstrating an intent to use or under
24 circumstances showing knowledge that some other
25 person intends to use those things for the purpose

PROCEEDINGS

1 of unlawfully manufacturing, packaging or
2 dispensing any narcotic drug and the packaging
3 relates to the wrappers and the Baggies they were
4 described as.

5 The other charge relates to scales and
6 it's the same elements, that the defendant
7 himself, having knowledge as to their use,
8 possessed them under circumstances showing that he
9 was going to package drugs for sale or some other
10 person intended to package drugs for sale. Those
11 are the elements with respect to that charge.

12 Third and fourth elements as the first
13 and second, the People have to prove them all
14 beyond a reasonable doubt. If they fail to prove
15 any one more or all the elements, your verdict has
16 to be not guilty.

17 With regard to the second part of your
18 note, the answer is no. Constructive possession
19 means that he may exercise dominion and control
20 over property not in his physical possession. A
21 person who exercises dominion and control over
22 property not in his physical possession is said to
23 have that property in his constructive possession.

24 A person has tangible property in his
25 constructive possession when that person exercises

PROCEEDINGS

1 a level of control over the area in which the
2 property is found or over the person from whom the
3 property is seized sufficient to give him or her
4 the ability to use or dispose of the property.

5 The law recognizes the possibility that
6 two or more individuals can jointly have property
7 in their constructive possession. Two or more
8 persons have property in their constructive
9 possession when they each exercise dominion and
10 control over the property by a sufficient level of
11 control over the area in which the property is
12 found or over the person from whom the property is
13 seized to give each of them the ability to use or
14 dispose of the property.

15 If there's more that you need, if there
16 are further requests about that, you can ask.
17 You're not necessarily bound to hear the same
18 definitions each time you ask, but for now, that's
19 the answer to the question. Please resume your
20 deliberations. We await your verdict.

21 (Jurors enter deliberating room.)

22 THE CLERK: Case number one on the
23 Part 93 calendar, Edward Green.

24 THE COURT: There's a verdict. I don't
25 know what it is. We'll find out together. I

VERDICT

1 never have had an accused nor counsel stand during
2 the verdict.

3 Bring in the jury.

4 COURT OFFICER: Jury entering.

5 THE CLERK: All right, foreperson, please
6 rise. How stand you as to the first count on the
7 indictment charging the defendant, Edward Green
8 with the crime of Criminal Possession of a
9 Controlled Substance in the First Degree, do you
10 find the defendant guilty or not guilty?

11 FOREPERSON: Guilty.

12 THE CLERK: How say you to the second
13 count of the indictment charging the defendant
14 with the crime of Criminal Possession of a
15 Controlled Substance in the Third Degree, guilty
16 or not guilty?

17 FOREPERSON: Guilty.

18 THE CLERK: How say you to third count of
19 the indictment charging the defendant with the
20 crime of Criminally Using Drug Paraphernalia in
21 the Second Degree, guilty or not guilty?

22 FOREPERSON: Guilty.

23 THE CLERK: How say you to the fourth
24 count of the indictment charging the defendant
25 with the crime of Criminally Using Drug

YVETTE PACHECO SENIOR COURT REPORTER

VERDICT

1 Paraphernalia in the Second Degree, guilty or not
2 guilty?

3 FOREPERSON: Guilty.

4 THE COURT: Poll the jury.

5 THE CLERK: Members of the jury you say
6 through your foreperson that you find the
7 defendant, Edward Green, guilty of the crime of
8 Criminal Possession of a Controlled Substance in
9 the Fifth Degree under the first count of the
10 indictment, guilty of Criminal Possession of
11 Controlled Substance in the Third Degree under the
12 second count, guilty of Criminally Using Drug
13 Paraphernalia under the third count, and guilty of
14 Criminally Using Drug Paraphernalia in the Second
15 Degree on the fourth count?

16 (JURY POLLED.)

17 THE COURT: Thank you. As you know, I
18 cannot do this myself. I appreciate your service.
19 You're excused. You need not speak to anybody if
20 you choose not to. See you around next time.
21 Please step in. Step in. We'll send your ballots
22 to you at the appropriate time.

23 (Jurors exit.)

24 THE COURT: How about Tuesday the 30th?

25 MR. KEITH: Of September.

YVETTE PACHECO SENIOR COURT REPORTER

VERDICT

1 THE COURT: I apologize. We need about
2 three weeks for a trial conviction. How about
3 October the 7th?

4 MR. KEITH: Actually, that day is a bad
5 day for me.

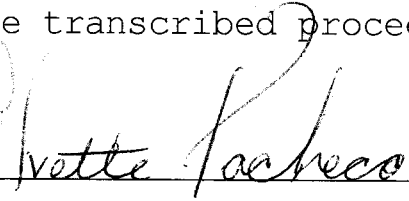
6 THE COURT: I don't mind if it's the 6th
7 or the 8th.

8 MR. KEITH: The 8th is good.

9 THE COURT: I usually do the sentences
10 at 12:30 in the afternoon. This will be back in
11 Part 93. Remand.

12 *****
13 *****

14 I, Yvette Pacheco, certify that this is a true
15 and accurate copy of the transcribed proceedings taken
16 by me in this matter.

17 
18 Yvette Pacheco
19 Senior Court Reporter

20
21
22
23
24
25
YVETTE PACHECO SENIOR COURT REPORTER